

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:	§	
	§	
BENJAMIN JOE GIRON, AKA BEN GIRON,	§	CASE NO. 21-30070-HCM-CH11
AKA 5405 MONTOYA DR. GROUP HOME,	§	
AKA THE LIGHT HOUSE FOSTER CARE	§	
HOME, DBA LIGHT HOUSE SENIOR CARE	§	
HOME, LLC, DBA MELENDRES HOME LLC	§	
	§	
DEBTOR,	§	

MOTION TO DISMISS CASE AS TO MELENDRES HOME, LLC
WITH PREJUDICE TO THE REILING FOR ONE YEAR

TO THE HON. H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, MDJJ REAL ESTATE, LLC, (“Movant”) by and through the undersigned attorney, and files this Motion to Dismiss Case as to Melendres Home, LLC with Prejudice to the Refiling for One Year in the above-styled and numbered cause. Movant would respectfully show the Court as follows:

NOTICE

**THIS PLEADING REQUESTS RELIEF WHICH MAY BE ADVERSE TO
YOUR INTEREST.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21)
DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED
HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO
BE HELD.**

1. On February 2, 2021, Debtor filed for relief under Chapter 11 of Title 11, United States Code. This case has not previously been converted from another Chapter of Title 11.
2. Upon information and belief, Melendres Home, LLC, is a corporation wholly owned by the Debtor.

3. This is the Debtor's third bankruptcy filing within one year and the Debtor's sixth case overall.

4. At the time of filing the Chapter 11 petition, Melendres Home, LLC was indebted to Movant pursuant to a Promissory Note executed on May 18, 2018, in the original amount of ONE HUNDRED EIGHTY-EIGHT THOUSAND AND NO/100THS DOLLARS (\$188,000.00) with interest thereon at the rate of 10% per annum.

5. The obligation of Melendres Home, LLC to pay the indebtedness is secured by a Deed of Trust dated May 18, 2018, on real property with all improvements known as:

LOTS 4 AND 5, LA LOMITA SUBDIVISION, LOCATED IN THE CITY OF LAS CRUCES, COUNTY OF DONA ANA, STATE OF NEW MEXICO, AS SHOWN ON PLAT THEREOF RECORDED ON MARCH 16, 1951 AS PLAT NO. 388, RECORDS OF DONA ANA.

6. At the time of the instant filing, Melendres Home, LLC was ten (10) months in arrears. Prior to the filing of the first case in August, Movant had filed its judicial foreclosure proceeding in New Mexico. The Debtor then filed for relief under Chapter 13 of the Bankruptcy Code on August 29, 2020, case no. 20-30966. The Debtor filed an emergency petition and then did not prepare Schedules or Statement of Financial Affairs. The Debtor subsequently requested dismissal of the case on September 27, 2020 and an order dismissing the case was entered September 28, 2020. No payments were made during the pendency of this case either to the Trustee or to Movant. Movant then proceeded with its foreclosure action.

7. The Debtor then filed another Chapter 13 on November 2, 2020, case no. 20-31151, again without Schedules and Statement of Financial Affairs. The requisite documents were subsequently filed on November 17, 2020. Movant filed a Motion to Determine Lack of Automatic Stay on November 20, 2020 averring that Melendres Home, LLC was not eligible to be a Debtor under Chapter 13 of the Bankruptcy Code. An Agreed Order was entered December 8, 2020 lifting

the automatic stay. Movant again proceeded with its foreclosure action. The Chapter 13 case was dismissed on January 8, 2021 for failure to make plan payments.

8. The Debtor subsequently filed the instant Chapter 11 case on February 2, 2021.

9. In each of the Debtor's cases, including this Chapter 11, the Debtor has attempted to include LLCs as Joint Debtors. Movant would assert that the LLCs are not eligible to be joint debtors pursuant to 11 U.S.C. §302. Section 302 defines a joint case as a single petition filed by a debtor that may be a debtor under such chapter and said individual's spouse. While Mr. Giron may be a debtor under Subchapter V, Melendres Home, LLC is not his "spouse", and, therefore, cannot be a joint debtor with Mr. Giron.

10. Based on the foregoing, Movant would request that the court dismiss Melendres Home, LLC, from the instant Chapter 11. Further, Movant would also request that based on the Debtor's history of repeated filings, the dismissal should be with prejudice to the refiling of any bankruptcy for Melendres Home, LLC for a period of one year.

11. A copy of the proposed order is attached hereto.

WHEREFORE, PREMISES CONSIDERED, MDJJ REAL ESTATE, LLC, Movant, prays that this Court enter an order dismissing Melendres Home, LLC from the instant case with prejudice to the refiling of a case under any Chapter for Melendres Home, LLC for a period of one year, and that Movant be granted such other and further relief as is just.

DATED this 8th day of February, 2021.

RESPECTFULLY SUBMITTED,

THE LAW OFFICES OF CHERYL S. DAVIS, PC
Attorneys for Movant
11601 Pellicano Dr., Bldg. B-18
El Paso, Texas 79936
(915) 565-9000
(915) 565-9191 (fax)

By: /s/ Cheryl S. Davis
CHERYL S. DAVIS
SBN: 24002456

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing was mailed or sent via ecf to all parties on the attached matrix on the 8th day of February, 2021.

/s/ Cheryl S. Davis
CHERYL S. DAVIS